

**CALENDAR ITEM
C54**

A 10

12/18/15

W 26885

S 2

V. Caldwell

GENERAL LEASE – RECREATIONAL USE

APPLICANT:

Jack M. Bertman, MD, Trustee of the Jack M. Bertman, MD Inc., Profit Sharing Plan and Trust

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Corte Madera Creek, adjacent to 35 Greenbrae Boardwalk, near the city of Larkspur, Marin County.

AUTHORIZED USE:

Use and maintenance of an existing deck, uncovered floating boat dock, pilings, and ramp not previously authorized by the Commission.

LEASE TERM:

20 years, beginning December 18, 2015.

CONSIDERATION:

\$287 per year, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

Liability insurance in an amount no less than \$1,000,000 per occurrence.

OTHER PERTINENT INFORMATION:

1. Applicant owns the upland adjoining the lease premises.
2. The existing deck and dock facilities have existed at this location for many years, but have not been previously authorized by the Commission. The Applicant is now applying for a General Lease – Recreational Use.
3. The Greenbrae Boardwalk is located along the Corte Madera Creek, on the east side of Highway 101, in Marin County. The Greenbrae Boardwalk community is made up of 49 houses elevated on stilts over marshlands, which are only accessible by foot or bike along a raised wooden walkway. As was commonplace in Larkspur in the early 1900's, the first ark (floating

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house) landed at what would become the Greenbrae Boardwalk in 1903. By the 1910's, three houses were built along the boardwalk and the community continued to grow through the 1920's and 1930's. On April 27, 1939, the Hugh Porter Subdivision was approved allowing residents of the existing ark community to acquire shoreline lots and develop legitimate dwellings. Over the years, the arks have transitioned from houses on barges to houses on foundations. Facilities such as decks, docks, and other appurtenant facilities have also been added and 42 of the 49 homes now have improvements extending beyond the Ordinary High Water Mark.

4. The Commission has had lease agreements with only 5 of the 42 marshland property owners with improvements extending onto State-owned sovereign lands, leaving many of the property owners with unauthorized facilities on State lands. To remedy the situation, the Commission's compliance staff conducted a public outreach effort to educate the community on the Commission's jurisdiction, leasing practices and lease application process. On August 28, 2014, Commission staff held a public meeting in Corte Madera for the Greenbrae Boardwalk property owners and other interested parties. Since that time, through the development of a frequently asked questions document, meetings, and many phone conversations and email communications, staff has worked with property owners to come to an agreement on lease terms and conditions acceptable to the parties involved.
5. The public's right to use California's waterways for navigation, fishing, and water-borne commerce is protected by the common law Public Trust Doctrine. Historically, the Public Trust ensures the right of the public to use its waterways to engage in "commerce, navigation, and fisheries." More recently, the Doctrine has been broadened by various court decisions to include various forms of water recreation, visitor-serving facilities, and preservation of lands in their natural state in order to protect scenic and wildlife habitat values. The Public Trust, as a common law doctrine, is not static but is continuously evolving to protect the public's needs and values inherent in the use of California's waterways.
6. The proposed application seeks authorization for the continued use and maintenance of an existing deck, uncovered floating boat dock, pilings, and ramp. The uncovered floating boat dock, pilings, and ramp are water-dependent facilities used for the docking of boats in order to aid in the navigation of Corte Madera Creek and other navigable waterways in the

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greater region. These particular facilities promote and accommodate recognized Public Trust needs and values consistent with Public Trust Doctrine. The deck has existed in Corte Madera Creek for many years and has a relatively small footprint. As such, the deck does not substantially interfere with the needs and values of the Public Trust Doctrine at this location and for the foreseeable future, as defined by the term of the proposed non-exclusive lease.

7. The staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, Title 14, section 15300 and California Code of Regulations, Title 2, section 2905.

8. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

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SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

Authorize issuance of a General Lease – Recreational Use to Jack M. Bertman, MD, Trustee of the Jack M. Bertman, MD Inc. Profit Sharing Plan and Trust, beginning December 18, 2015, for a term of 20 years, for use and maintenance of an existing deck, uncovered floating boat dock, pilings, and ramp not previously authorized by the Commission as described in Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof; consideration: \$287 per year, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

W 26885

LAND DESCRIPTION

A parcel of tide and submerged land situate in the bed of the Corte Madera Creek, in the unincorporated area of Greenbrae, County of Marin, State of California, and being more particularly described as follows:

COMMENCING at the southeast corner of Parcel One as described in that certain Grant Deed recorded as Document No. 2007-0039434, Official Records of said county; thence along the southeasterly boundary of said parcel, North $39^{\circ} 13' 00''$ East 138.30 feet to the POINT OF BEGINNING; thence along said southeasterly boundary and northeasterly prolongation thereof, North $39^{\circ} 13' 00''$ East 53.31 feet; thence leaving said boundary prolongation the following three (3) courses:

- 1) South $50^{\circ} 45' 01''$ East 11.33 feet,
- 2) North $45^{\circ} 37' 44''$ East 33.87 feet,
- 3) North $49^{\circ} 06' 28''$ West 51.13 feet to northeasterly prolongation of the northwesterly boundary of said parcel;

thence along said prolongation and northwesterly boundary, South $39^{\circ} 13' 00''$ West 88.60 feet; thence leaving said northwesterly boundary, South $51^{\circ} 01' 20''$ East 36.00 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portions lying landward of the Ordinary High Water Mark on the right bank of said Corte Madera Creek.

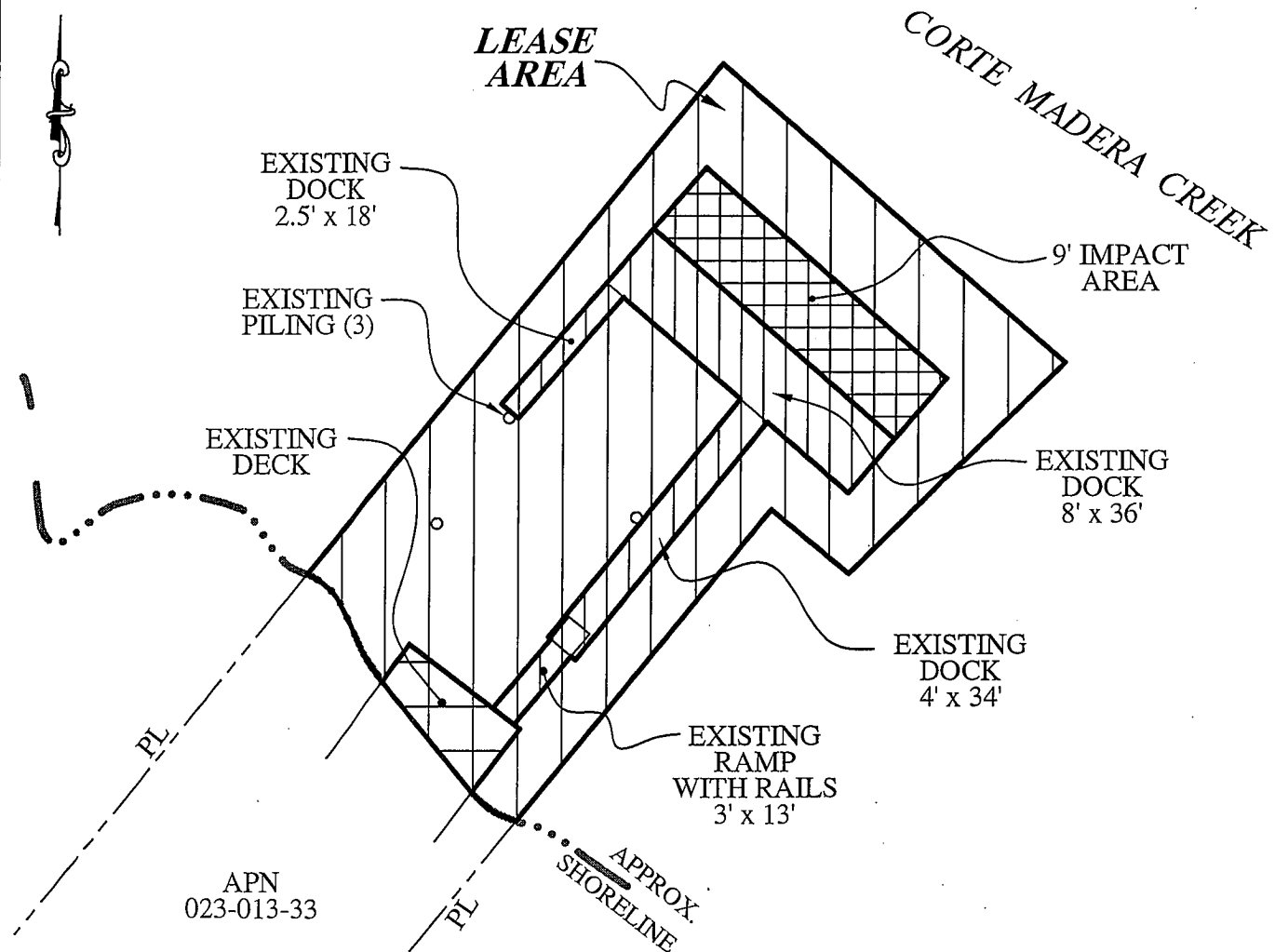
END OF DESCRIPTION

Prepared 10/02/2015 by the California State Lands Commission Boundary Unit.



NO SCALE

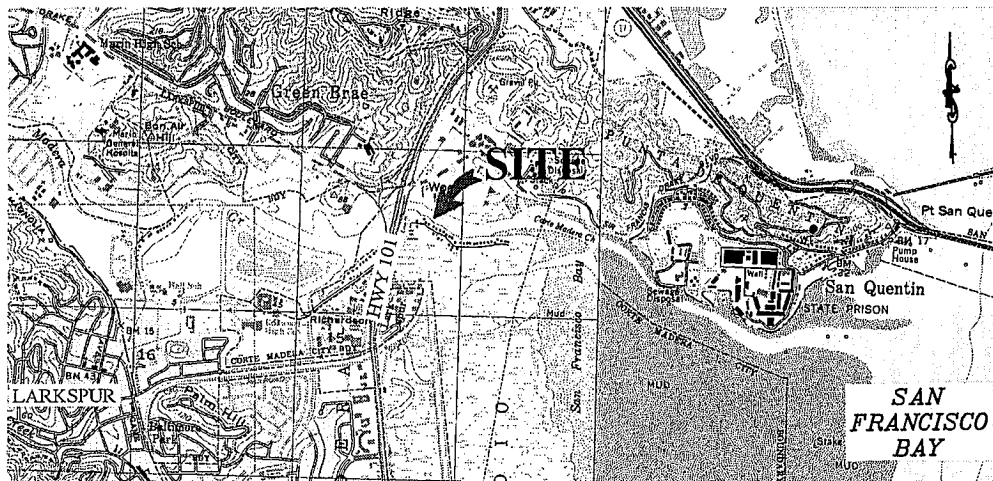
SITE



35 GREENBRAE BOARDWALK, GREENBRAE

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit B

W 26885

BERTMAN, MD TRUSTEE

APN 023-013-33

GENERAL LEASE -
RECREATIONAL USE
MARIN COUNTY



TS 10/02/15